IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 17440 of 2004

Between:

Centre for DNA Fingerprinting and Diagnostics (An Autonomous Centre of the Department of Biotechnology,
Ministry of Science & Technology, Government of India), Rep. by its Director,
Nacharam, Hyderabad - 500 076.

..... PETITIONER

AND

1 A.P. Pollution Control Board, 2nd Floor, HUDA Complex,
Maitrivanam, S.R. Nagar, Hyderabad - 500 038. Rep. by its Member Secretary.
2 The State Government of A.P., Rep. by its Principal Secretary, EFS & T Department,.
A.P. Secretariat, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to:

(a) issue a Writ of Certiorari and/or any other appropriate Writ, order or direction quashing/setting aside the judgment and order dated 31-05-2004 of the Appellate Authority constituted under the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the "Water Act") and the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the "Air Act") dismissing Appeal No.23 of 2004 of the Petitioner against orders of the A.P. Pollution Control Board;

(b) issue any other appropriate Writ, order or direction to the effect that the

Appellate Authority reconsider the issues raised in Appeal No.23 of 2004 afresh and dispose of them in accordance with law;

(c) declare that neither the Water Act not the Air Act is applicable to the Petitioner as it is not an industry and hence exempt the Petitioner from the requirement to obtain any clearances from Respondent No.1;

(d) issue any other Writ, order or direction in favour of the Petitioner which may be deemed fit and proper in the circumstances of the case; and

(e) award costs of the Petition to the Petitioner and against the Respondents.

Counsel for the Petitioner: Dr. P.B.VIJAY KUMAR

Counsel for the 1st respondent: Mr S.V.Bhatt

Counsel for the 2nd respondent: The Advocate-General

JUDGMENT: (per Hon'ble Sri Devinder Gupta, the Chief Justice).

The Petitioner is a Central Government autonomous body under the Ministry of Science and Technology fully funded by the Government of India. It is a research laboratory established by the Presidential sanction to apply the fruits of modern biology to serve the public with varied objectives. It is a center for DNA Fingerprinting and Diagnostics (CDFD). On 6.8.1996 the petitioner applied to the State of Andhra Pradesh for alienation of land Ac. 10.15 in its favour to set up Center for DNA Fingerprinting and Diagnostics at Hyderabad stating that the proposed center will be first of its kind in the entire world and will cater to the needs of the country besides functioning as a center of excellence for International Scientists for study of bio-diversity. It is also stated that eventually the center will be developed on the lines of Centre for Cellular and Molecular Biology (CCMB), which is now considered a pioneer institute in the country and best in the world, which is housed in 14 acres of land. The State Government considered the request of the petitioner

and on 12.3.1996 accorded sanction for alienation of ten acres of land in petitioner's favour in Survey No. 17/1 situate at Himayatsagar village, Moinabad Mandal, Rangareddy district. The petitioner thereafter commenced setting up of its laboratory.

2. On 3.12.2002 a news item appeared in Deccan Chronicle that CDFD Laboratory being constructed at the site would endanger Gandipet and Himayatsagar, the two water bodies that quench the thirst of fifty lakh and odd population of the twin cities. Newspaper clipping also high-lighted that setting up of CDFD research facility is in violation of G.O.Ms.No. 111 dated 8.3.1996 issued by the State Government banning any activity within 10 K.Ms of full tank level of the water bodies.

3. On publication of the paper clipping aforementioned, the officials of the A.P. Pollution Control Board (hereinafter referred to as "the Board") are stated to have inspected the proposed location of the Laboratory on 4.12.2002. It was noticed that civil construction of the CDFD Laboratory was almost complete but the infrastructure in the research laboratory was yet to be installed at the site located adjacent to Osman Sagar lake at a distance of about 500 metres. As the research lab had not taken any permission from the Board and had gone ahead with construction of the lab. Directions were issued on 8.1.2003 to the petitioner under Section 33 (a) of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the "Water Act") and Section 31 (a) of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the "Air Act") to stop all construction/development activities with immediate effect. It was pointed out in the notice that as per the provisions of Section 25/26 of the Water Act and Section 21/22 of the Air Act, it was mandatory to obtain consent for establishment from the Board and thus there was violation of Section 25 of the Water Act and Section 21 of the Air Act, which is punishable respectively under Sections 44 and 37 of the Water Act and the Air Act.

4. The petitioner on receipt of notice appears to have stopped further activity and on 7.3.2003 filed an application praying for the requisite consent for establishment. The petitioner in its application pointed out that it was a society registered under the Societies Registration Act and the funding department was of Department of Bio-technology, Ministry of Science and Technology, Government of India. Being a Molecular Biological Laboratory, a very small quantity of routine chemicals will be used and that solid waste will be collected in separate containers

and disposed of by M/s. Bio Medicare, specialized agency. The application of the petitioner was accompanied by Rapid Environmental Impact Assessment (EIA) report prepared by the Centre for Environment Institute of Post Graduate Studies and Research, J.N.T.U., Hyderabad. The Board through its letter dated 22.3.2003 asked for certain clarifications which the petitioner duly conveyed to the Board on 4.4.2003 along with another revised rapid EIA report prepared by the same institute.

5. On 30.4.2003 with reference to the petitioner's application seeking consent for establishment of Centre for DNA Fingerprinting and Diagnostic Laboratory, the petitioner was informed that considering the orders of the Supreme Court dated 1.12.2000 in Civil Appeal No. 368-371/99 and G.O.Ms.No. 111 dated 8.3.1996 prohibiting establishments that generate pollution in the catchment of Himayatsagar and Osmansagar lakes up to 10 K.Ms., full tank level, the Committee of the Board feels that it would be inappropriate to approve the proposed site for location of the unit on the ground that it falls within the prohibited area as per G.O.Ms.No. 111 dated 8.3.1996 and is covered by the ban imposed by the Supreme Court. Petitioner was informed that the request for grant of consent for establishment to the lab is rejected but only dry operations, such as computer records, DNA printing and human resources development may be carried on in the area.

6. On 7.5.2003 revised application was submitted by the petitioner to set up dry operations excluding wet operations, and on 30.5.2003 the Board subject to the conditions contained in Schedules A & B of the order issued consent for establishment under Sections 25 of the Water Act and 21 of the Air Act to undertake the following activities:

I.	DNA Profile Records and Analysis Facility
II.	Counselling and Consultations Services
III.	Bioinformatics Service Facility
IV.	Computer Center for TCS-CDFD Collaboration studies
V.	Centre of Excellence for Sun Micro Systems and AP Bionet Facility
VI.	Guest House
VII.	Scientist Apartment
VIII.	Single Room Quarters
IX.	Director Residence
X.	Hostel.

7 . On 28.8.2003 the petitioner applied to the respondent-Board for re-consideration of its application in view of the revised EIA report, which had been submitted to the Board on 4.4.2003 since the technical committee of the respondent-Board had met only on 9.4.2003 and had not examined the revised EIA report. The petitioner in the application for re-consideration assigned reasons that why it was entitled to the consent for establishment, both for dry as well as wet laboratory operations, which are absolutely essential for conducting all activities of CDFD, as planned originally. Again on 8.12.2003 same request was renewed after the petitioner drastically reduced its operations and gave further reasons in support of its request. On 16.1.2004 the request was turned down saying that the Board had examined the matter and decided to reiterate the stand because of the Supreme Court decisions. Feeling aggrieved, the petitioner preferred statutory appeal under Section 28 (a) of the Water Act and Section 31 of the Air Act before the appellate authority. The appeal was also dismissed on 31.5.2004 on the same grounds as were recorded by the Board in its order. Still feeling aggrieved the petitioner has approached this Court questioning the legality and validity of the orders passed by the Board as well as by the appellate Court in having rejected its application for setting up of the laboratory for dry and wet operations.

8 . The orders impugned in the writ petition have been challenged on the ground that without conducting any enquiry into the matter or examining the material already on record or applying mind in a judicial manner the Board as well as the appellate authority have mechanically concluded against the petitioner. The appellate authority without any lawful basis concluded that wet operations lead to pollution of the water in the two lakes. The appellate authority also erred in law in failing to consider that whether the Board had made due enquiry in terms of Section 25 (3) of the Water Act in respect of the petitioner's application for consent, which enquiry is mandatory. The appellate authority also erred in not considering whether the petitioner is an industrial plant and falls with in the category of polluting industry or any other establishment in the catchment areas of the lakes up to 10 K.Ms full tank levels in terms of Paragraph 3 (1) of G.O.Ms.No. 111. It is also petitioner's case that the respondents have mechanically taken a decision that absolute ban is imposed by the Supreme Court in the two cases relied up on by the Board, viz., **A.P.**

Pollution Control Board v. Prof. M.V. Naidu and **A.P. Pollution Control Board v. Prof. M.V. Naidu and others**, conveniently called as "**Surana's case No.1 and Surana's Case No. 2"** respectively. There was no application of mind by the respondents that the so-called effluents would in any manner cause pollution or was sufficient or likely to cause water and air pollution. Without such findings it was not permissible to the respondents to have rejected petitioner's application.

9. The writ petition is opposed by the respondents on the ground that the decision has been taken by the Board as well as the appellate authority within the parameters of law on due consideration of the material available on record and on correctly applying G.O.Ms. No. 111 and the law laid down by the Supreme Court. As such the orders are not liable to be interfered with by this Court in exercise of its writ jurisdiction. CDFD is a highly chemical containment complex. The respondents' case is also that the proposed activities of the petitioner will also generate water pollution, which is supported on the basis of EIA report submitted by the petitioner as well as subsequent report prepared by the National Environmental Engineering and Research Institute (NEERI) relied upon by the petitioner. It was urged on behalf of the respondents that applicability of the Water and the Air Acts is not dependent on treatability of the effluents as suggested in the report of NEERI now relied upon by the petitioner. G.O.Ms.No. 111 dated 8.3.1996 and the decisions in **Surana's Cases** are based on precautionary principles. Any likely damage to water body from subject sources would be irreversible and is likely to affect lakhs of people in twin cities. The Committee of the Board, having gone through the reports submitted by the petitioner, formed an opinion that the proposed activities are likely to generate water pollution, therefore, in terms of G.O.Ms.No. 111 and **Surana's cases** permission cannot be accorded.

10. We have considered respective submissions of learned counsel for the parties on legal aspects as well as merits of the case.

11. Primarily we are concerned with the Water Act and there is no involvement, for the time being, of the Air Act. Section 25 of the Water Act, inter alia, provides that no person shall, without the previous consent of the Board, establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge

sewage or trade effluent into a stream or well or sewer or on land. Application for consent of the State Board under sub-section (1) of Section 25 is to be made in Form 13 as provided under Rule 32 of the Rules framed under the Act. On receipt of the application, the Board is required to make such enquiry, as it may deem fit, in respect of the application for consent and in making such enquiry is required to follow the procedure as may be prescribed. Grant of consent has to be subject to certain conditions as the Board may impose as are provided for in Section 25 (1) of the Water Act. Refusal, if any, of consent has to be for reasons to be recorded in writing. Any person aggrieved by the order made by the State Board is entitled to file appeal under Section 28 of the Act to the appellate authority. The terms 'sewage effluent' and 'trade effluent' have been defined under Clauses (g) and (k) respectively of Section 2 of the Act and combined together have been referred to as 'discharge of sewage'.

12. One of the submissions made on behalf of the petitioner that since the CDFD is a research and development organization and is not associated with production, manufacture or trade, thereof, therefore, it will not fall within the term 'industry' and as such no consent is required to be obtained, deserves outright rejection in view of the express language of Section 25, which prohibits any person from establishing or taking steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land. It is not that only an industry would come within the ambit but any other person would also fall within the ambit of Section 25 when his activity by taking steps even for establishment of industry, operation or process or any treatment is likely to have the effect of discharging effluent into a stream or well or sewer or on land.

13. We are of the view that only one of the points on which submissions were made on behalf of the petitioner would be sufficient to dispose of this writ petition, therefore, we need not go elaborately into the merits of the case. The said objection is that the Board has failed to make any enquiry before taking its decision on the petitioner's application for consent. After an application is filed the Board after making enquiry is also entitled to obtain further information as it may deem fit in order to enable it to take appropriate decision in the matter. On receipt of the application from the petitioner, the Board did ask for further information from the petitioner. Further information as sought for was supplied by the petitioner, which

fact is not in dispute. Initially, Rapid EIA prepared by the Centre for Environmental Institute of Post Graduate Sciences and Research, J.N.T.U., Hyderabad was submitted along with the application. But after the information was sought and before decision was taken by the Board, it is the petitioner's case that on 4.4.2003 Revised Rapid EIA prepared by the same Institute was submitted. This Revised Environmental Impact Assessment Report dealt with different kinds and nature of waste and their impact. According to the petitioner, this was not subjected to any enquiry by the Board since decision was taken by the Board on 9.4.2003. Revised EIA had to be examined in detail by the Technical Committee of the respondent-Board. Learned standing counsel for the Board informed us that the Technical Committee of the Board comprises of seven members, who are experts in various fields. It is only after the opinion of the Technical Committee is given, that the Board takes its decision in the matter. After decision was conveyed to the petitioner on 28.8.2003, the petitioner applied to the Board for re-consideration of its application in view of the revised EIA report submitted on 4.4.2003 since as per the petitioner, it was not at all considered. On 8.12.2003 request was further renewed and the petitioner pointed out that it has decided to reduce drastically its operations and gave further reasons in support of its request. This request was turned down on 16.4.2004 saying that the Board has already examined the matter and decided to reiterate its stand because of the decisions of the Supreme Court in **Surana's Cases**. As per the stand taken by the Board, the Revised EIA report dealing with dry operations was submitted by the petitioner only on 7.5.2003 and not on 4.4.2003 when consent for dry operations was issued by the Board on 30.5.2003. Representation was received from the petitioner only on 28.8.2003 to re-consider the order by which the Board had accorded in principle permission for dry operation alone since according to the respondent/Board it does not generate any pollution. The appeal was preferred by the petitioner on 12.2.2004. It was dismissed on 31.5.2004. Writ petition was filed in this Court on 9.9.2004. Along with the writ petition, fresh Report on Establishment of Centre for DNA Fingerprinting and Diagnostics prepared by the National Environmental Engineering and Research Institute, Nagpur was submitted in support of the petitioner's case. Obviously, the Board had no occasion to have it examined.

14. As per the report submitted by the NEERI, the petitioner is a state-of-the-art ETP with zero discharge establishment and does not qualify as a polluting establishment. The petitioner is totally environmental benign and cannot be

categorized as an establishment or an industry belonging to the red category that generates pollution within the ambit of G.O.Ms.No. 111. NEERI also asserts that the Revised Rapid EIA report prepared by the Centre for Environment, Institute of Post Graduate Studies & Research, J.N.T.U., Hyderabad has also determined that the operation of the petitioner does not cause any detrimental environmental impact on the environment in general and to the two lakes in question in particular. The petitioner only envisages establishment of biological containment laboratory (P3 level) which has all safety aspects internalized as per the international norms making accidental escape of biological samples practically impossible. Even if there is an escape, it is not going to pollute the lake as the pathogens proposed to be handled by the petitioner are not at all water borne pathogens. NEERI has also made certain recommendations that keeping in view of the sensitivity of the issue of establishing a laboratory within 10 KM of Gandipet lake, following measures deserves to be taken:

> "As per the information furnished by the CDFD and the Rapid EIA Report, CDFD is going to generate 76 cum of domestic sewage and 4 cum of laboratory effluent. In the proposed effluent treatment plant, both these wastes will be mixed and 80 cum of waste mixed water is proposed to be treated in the ETP. It is recommended that CDFD segregate 4 cum of laboratory waste and send this wastewater to Pathancheri CETP for treatment and disposal. This will leave CDFD with only domestic sewage, which can be easily recycled and reused for toilets and green belt development purposes thereby achieving zero discharge from CDFD.
>
> It is recommended that CDFD should not install incinerator within the proposed premises. The incinerator, if at all required for incinerating dead animals from the animal house experiments and hospital wastes be located at a place which is 10 Km away from the lake as the incinerator ash is considered as hazardous. Alternatively, CDFD may contact an authorized agency in Hyderabad who handles biomedical wastes and dispose the dead animals through that agency in an environmental friendly manner."

15. Admittedly, this report of NEERI was neither considered by the respondent/Board nor by the appellate authority. They had no occasion to do so. Admittedly the Board only on the basis of what was stated by the petitioner in its application and in its explanation to the queries of the respondent/Board and the first Rapid EIA report of the Centre for Environment Institute of Post Graduate Studies & Research, J.N.T.U., Hyderabad came to the conclusion that the petitioner's activities are likely to discharge sewage or trade effluent. Therefore, in terms of G.O.Ms.No.

111 and the decisions of the Supreme Court, the Board is within its right to reject the application and it is not required to make any further enquiry into the matter as argued on behalf of the petitioner. Such a stand taken by the Board in our view is not at all envisaged under the scheme of the Act. G.O.Ms.No. 111 has to be read with G.O.Ms.No. 192 dated 31.3.1994 and G.O.Ms.No. 111 was also the subject matter of consideration before the Supreme Court in **Sarana's Cases**.

16. In **1st Surana's case,** M/s. Surana Oil and Derivatives India Limited, hereinafter called the Company, had been granted by the Government of India letter of intent under the Industries (Development and Regulation) Act, 1951, inter alia on obtaining no objection certificate from the respondent/board. The company applied to the respondent/board seeking clearance to set up unit under the provisions of the Water Act. The company listed 'glycerin, spent bleaching earth and carbon and spent nickel catalysts' as by-products of its process. The Pollution Control Board rejected company's application mainly on the ground that the unit was a polluting industry, as was done in the instant case, since it fell under the red category of polluting industries. The appellate authority allowed the appeal and held the industry as non-polluting industry and directed the Board to give consent for establishment. The High Court also upheld the appellate authority's order. The matter was taken to Supreme Court by the Pollution Control Board and by others. In the first order in **Surana's case** which was passed on 27.1.1999 the question arose whether the Supreme Court, while dealing with the environmental matters under Article 32 or 136 or the High Courts under Article 226 of the Constitution, can make reference to National Environmental Appellate Authority for investigation and opinion. Answering the said question in the affirmative, the Supreme Court, inter alia, held that in the context of emerging jurisprudence relating to environmental matters it is the duty of the Supreme Court as well as the High Courts to render justice by taking all aspects into considerations. However, sometimes in such cases the Supreme Court has been finding sufficient difficulty in providing adequate solutions to meet the requirements of public interest, environmental protection, elimination of pollution and sustained development. The monitoring of a case as it progresses before the professional authority and the consideration of objections raised by the affected parties to the opinion given by the professional technical bodies have again been creating complex problems. Therefore, with a view to

ensure that there is neither danger to environment nor to ecology and at the same time ensuring sustainable development, the Supreme Court held that the scientific and technical aspects can be referred for investigation and opinion to expert bodies, such like appellate authority under the National Environmental Appellate Authority Act, 1997. Any opinion rendered by such authority would, of course, be subject to approval and such procedure can be adopted in matters arising in Supreme Court as well as the High Court. In the said case, the Supreme Court then referred the scientific and technical aspects to the National Environmental Appellate Authority, viz., (a) Is the respondent-industry a hazardous one and what is its pollution potentiality, taking into account the nature of the product, the effluents and its location? and (b) Whether the operation of the industry is likely to affect the sensitive catchment area resulting in pollution of the Himayat Sagar and Osman Sagar Lakes supplying drinking water to the twin cities of Hyderabad and Secunderabad? In addition the question whether the industry concerned may be permitted to make trial runs was also referred for decision to the appellate authority.

17. On receipt of the reference, decision was rendered by the Supreme Court in **2nd Surana's case.** The Supreme Court critically examined the report of National Environmental Appellate Authority as also three other expert bodies and disposed of the appeals relying upon the opinion rendered by the appellate authority. The Supreme Court applied precautionary principle that the said principle comes into play and it cannot rely upon a bare assurance of the petitioner that care will be taken in the storage of serious hazardous materials and they would not be effectively removed without spillage. The Supreme Court opined that it was humanly not possible to keep track whether the pollutants are not spilled over. The Supreme Court went through the entire reports in detail and further opined that it led to the inference that there is a very great risk that these highly hazardous materials could seep into the earth and reach the tanks, after passing through the dolerite dykes, as pointed out by the National Geophysical Research Institute. Thus, on the basis of the scientific material obtained by the Court from the three highly reputed sources, it was held that it was not a fit case for directing grant of no objection certificate by the Board. Needless to add that the Supreme Court did not merely on the basis of G.O.Ms.No. 111, proceed to reject the application of the petitioner therein, but since the petitioner was a polluting industry and there cannot be any establishment of polluting industry within 10 K.Ms from the water body, the application requires

outright rejection.

18. The question before us now is whether we should or should not proceed to do the same exercise as was done by the Supreme Court in **Surana's case**, especially when the Technical Committee of the Board, which authority is empowered to make such enquiry as may be deemed fit in respect of such application, has failed to take all aspects into consideration and has gone merely by the first report submitted to it. In case one would go through the report submitted by the NEERI, one would be led to assume that the decision of the primary authority is not in consonance with law. Moreover, the technical committee of the respondent/board had no occasion to go through the said report. In such a situation the course, which must be adopted, would be to remit the matter for reconsideration. The appellate authority constituted under the Water Act, of course, would examine the legality and validity of the order of the Board and the Board's decision is based upon the opinion of its Technical Committee, which must examine the material relied upon by the petitioner critically and find out whether high risks are or are not involved. When it has been opined by a reputed institute like NEERI that it is zero polluting industry the case deserves to be re-considered objectively. On these technical matters reliance has to be placed upon the expert bodies like the one whose reports were submitted by the petitioner. Even in G.O.Ms.No. 111, J.N.T.U., is one of the agencies recognized by the Government who is to monitor periodically the level of different pesticides, fertilizers, etc., carried into the lakes.

19. Resultantly, we will allow the writ petition, set aside the two orders impugned in the writ petition and direct the respondent/Board to consider afresh the application of the petitioner in consonance with law on the basis of the material supplied by the petitioner after making due enquiry and calling for further information which the respondent/Board would like the petitioner to supply or the other material which the petitioner would like to place before the Board. The respondent/Board will take its decision in accordance with law as expeditiously as possible and in any case within a period of three months from the date of receipt of writ order from the Court. No costs.

16th March, 2005.

LR Copy to be marked: Yes.

Sarfraz.

Assistant Registrar

// **true copy** //

Section Officer

One fair copy to Hon'ble Sri Devinder Gupta, The Chief Justice, High Court of A.P., Hyderabad.

One fair copy to Hon'ble Sri Justice B.Seshasayana Reddy, Judge, High Court of Andhra Pradesh, Hyderabad.

1) Principal Secretary, EFS & T Department,.
A.P. Secretariat, Hyderabad.

2) Member Secretary, A.P. Pollution Control Board, 2nd Floor, HUDA Complex, Maitrivanam, S.R. Nagar, Hyderabad - 500 038.

3) The Advocate-General, High Court Buildings, Hyderabad.

4) 1 CC to Mr S.V.BHATT

5) 1 CC to Mr K.S.MURTHY

6) 1 CC to Dr P.B.VIJAY KUMAR

7) The Secretary, Ministry of Law, Justice and Company Affairs, Union of India, New Delhi.

8) The President, High Court Advocates' Association, High Court Buildings, Hyderabad.

9. 8 LR copies.

10. 2 CD copies

11 Director, Centre for DNA Finger Printers and Diagnostics, Nacharam, Hyderabad.